

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Railroad

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad (ICG):

Claim on behalf of G. L. Brandon, for reinstatement to service with all lost time and rights restored, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, the Discipline Rule, when it dismissed him on July 2, 1990." Carrier File 135-296-3spl. Case No. 39. BRS Case No. 8232-ICG.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Acting on an anonymous tip that the Claimant was conducting personal business during working hours and while using a Carrier vehicle, Carrier's Special Agents observed the Claimant for three days. On each of the three days, the Claimant was observed using his Carrier vehicle in the performance of personal business for substantial amounts of time during working hours.

Following a formal Investigation, the Claimant was dismissed effective July 2, 1990. The Organization filed a claim on his behalf and failing to resolve the matter on the property, has brought it to this Board for final resolution.

The Carrier contends the Claimant was guilty because he was observed attending to personal matters during his scheduled working hours. The Carrier asserts that the amount of time the Claimant spent on personal matters exceeded the amount of time allotted to him for a lunch period, and that the Claimant worked less than one-third of his scheduled working day, although he received a full day's pay, on at least three occasions.

It is the position of the Organization that the Claimant is not guilty in light of mitigating circumstances. The Organization points out that the Claimant cooperated fully with the Carrier's Investigation, and that the Claimant has 35 years of service with the Carrier and a relatively clear record since August 13, 1976. The Organization alleges that the Claimant frequently performed service after his assigned hours without pay, and therefore the Claimant's dismissal was an excessively harsh discipline.

The Carrier maintains that the discipline imposed upon the Claimant was warranted because he was stealing from the Carrier.

With respect to the substantive charge, this Board finds that there is sufficient probative evidence in the record to establish that the Claimant is guilty of the charge against him.

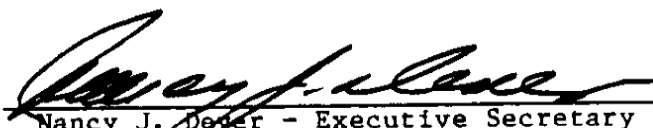
With respect to the disciplinary action, the Board will not set aside discipline imposed by a Carrier unless it is unreasonable, arbitrary, or capricious. Third Division Award 26160. In light of the mitigating circumstances outlined above, this Board finds permanent dismissal excessive. Therefore, this Board recommends reinstatement with seniority and all other rights unimpaired, but without backpay on a last chance basis.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.